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ABSTRACT

This paper examines risk and liability issues related to school to work (STW) programs. With the passage of the federal School-to-Work Opportunities Act of 1994, the distance between the school and the world of work is diminishing. The Act's requirement that students, schools, and employers become part of an integrated learning process brings the parties together in rather unique and unfamiliar roles. Child labor laws, liability laws and issues, and risk management directly impact operations of STW programs. Vermont and other states have formed statewide STW risk management committees, prepared risk management manuals, and provided multiple training sessions to all involved. STW stakeholders must understand the financial and legal exposures they are subject to when placing students off campus as part of an academic program. Key questions relate to health care insurance, who is responsible for insurance costs, coverage needed for various STW activities, and state and federal legislative mandates. Five major types of insurance are briefly described. Issues that need closer scrutiny and, in some cases, federal action include delineating the employment relationship, defining nonpaid work based learning, producing a national technical assistance guide, workers' compensation and paid work-based learning, student health and safety on the job, a central information source, definitions of insurance coverage, insurance product review and development, and liability in areas other than physical injury. Tables of insurance options for various activities and an STW risk matrix are included. (SV)

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School-to-Work Risk Management

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Background

With the passage of the federal School-to-Work Opportunities Act of 1994, educators, private and public sector employers, organized labor and a host of other entities have been asked to become partners in the educational process of youth. Through this legislation, the traditional distinction between the school and the world of work is gradually coming to an end. In order to better prepare students for the high skill, high wage jobs of a globally competitive economy, new strategies are developing to expand and enhance the learning opportunities that students have available to them.

The Act requires that state and local consortia form to implement the school-to-work initiative. This involves a host of individuals from a variety of entities working together and bridging the gap between school and work. A fundamental component of the school-to-work initiative is the provision that all students are provided with an opportunity for work-based learning. This requirement means that students, schools and employers become part of an integrated learning process which brings the parties together in rather unique and unfamiliar roles. The workplace becomes an extension of the classroom. Employer mentors and teachers collaborate on the best approaches to teach abstract academic subject matter. Success in the classroom now becomes a function of an external activity, developmentally appropriate, related to a career and/or an educational goal.

These new strategies are moving along with and ahead of other factors, i.e., child labor laws, liability laws and issues, and risk management, to name a few, that directly impact on the implementation and operations of the new school-to-work initiative. School-to-work initiative implementors have had varying experiences. Many states have formed STW Risk Management Committees. Vermont formed its committee about two years ago and has published a STW Risk Management Guide which has been widely disseminated throughout the state. Over the past two years, multiple training sessions have been provided for educators, parents, school-to-work administrators, employers, and others. More are planned. Currently, the state is preparing a Work-Based Learning Manual (a "How To" guide) and one of its chapters will be on the legal issues involved with school-to-work risk management. One resource guide is nearing completion in Chittenden County, Vermont's most populated county, and it, too, will have a section dedicated to risk management. Other regional resource guides are planned.

Recently, the National School-to-Work Office asked Vermont to convene a national workgroup on risk management. The group was asked to: 1) identify what states need; 2) ascertain what is and is not working; and 3) delineate suggested next steps regarding this issue. The result of the workgroup's May, 1997 meeting was a paper that was presented in Chicago to the nation's state school-to-work

directors. Reaction from the National STW Office has been very positive and supportive. Already, one technical assistance guide has been published which deals with employer liability issues. Under production now is a second national technical assistance guide that will address insurance issues, trainee-employee definitions and other legal topics related to STW. Several states will be profiled detailing how they have handled STW risk management paper and Vermont's STW Risk Management Guide.

STW Risk Management

Risk management issues impact on all of the participants of school-to-work, especially students and their parents, employers and schools. It is imperative that school-to-work stakeholders understand the financial and legal exposures they are subject to when placing students off campus as part of their academic program. With the appropriate information, training, supervision, protocols, checklists, tools and insurance products, risks can be minimized and effective teaching/learning strategies can take place. The National School-to-Work Office, states, and local STW partnerships have both the responsibility and the opportunity to ensure that school-to-work activities occur in safe environments.

Identification of Major Issues

The major goals of STW risk management are: to protect the health and welfare of a student who is participating in school-to-work (STW) activities; to provide equal access to STW activities for students in both rural and urban areas by encouraging all employers (large and small) to participate in work-based learning opportunities; to preserve the learning opportunities for students in off-site educational environments; and to help school districts manage their exposure to risks. Several key questions are: What is in place to recover the cost of health care that may be required as well as to protect the future earnings potential of the youth? Who is responsible for these costs: the employer, the parent or the school? What conditions or circumstances shape the differentiation of responsibilities among the involved groups? What different coverages are needed for the variety of STW activities? What is mandated by state/federal law? Is state/federal legislation needed? Is a new insurance product needed? What are the other areas of risk management, other than insurance, that states need to attend to?

The following are the major types of insurance that help reduce exposure to financial liability:

(1) **General Liability Insurance:**
Liability is not accident or medical insurance. Its purpose is to protect the insured against claims of negligence. Negligence exists when a duty is owed to another and a

non-intentional breach of that duty occurs resulting in some form of physical injury and/or property damage.

(2) **Basic Voluntary Student Accident Insurance:**
Accident insurance offered to students but generally not required. For certain activities such as school sports, student accident insurance may be required and not voluntary. Most traditional accident insurance programs require the student to be on the school site or under the direct supervision of a school employee for the student to be covered unless other provisions are made within the actual policy.

(3) **Student Accident Catastrophic Insurance:**
Serves as a potential stop-loss for a school in case of a major injury. Most basic voluntary student accident insurance programs provide maximum benefits up to $25,000; some programs include $50,000 or $100,000 benefit maximums. Catastrophic insurance has much higher maximum benefits such as $1,000,000 or $5,000,000 along with a substantial deductible amount that assumes the existence of a basic accident insurance policy or a process for self-insurance.

(4) **Workers' Compensation:**
Insurance that compensates an individual's lost wages (a percentage) due to injury suffered while on the job and covers medical costs and the loss of functional capacity. Individuals who are engaged in a paid employee-employer relationship must be covered.

(5) **Automotive Liability Insurance:**
Insurance that covers the liability of the school and the vehicle's driver as well as damage to the vehicle. In general, a differentiation of coverage exists when one is using a school-owned vehicle vs. a privately owned vehicle. Depending on the size of the vehicle, special licenses may be required.

Also included are two charts that were developed by Vermont's STW Risk Management Committee as part of its widely-disseminated "STW Risk Management Guide" (see

Attachment A and B). The guide is being used by STW coordinators, educators and employers throughout Vermont.

There are, however, several areas that need closer scrutiny and in some cases, federal action. The following is an identification of these issues. They come from a paper on STW Risk Management that was prepared by a national STW Risk Management Workgroup formed under the sponsorship of the National School-to-Work Office and convened by the State of Vermont in May, 1997.

Delineating the Employment Relationship: First, there is a lack of a clear understanding of the conditions under the Fair Labor Standards Act which allow for non-paid work with an employer. Second, there is a fine line between a youth's being productive and nonproductive at a job site and STW practitioners have not been provided with useable guidelines on how to implement this type of work-based learning activity. Specifically, when does a trainee become an employee? Third, there needs to be a rational process designed to determine this transition and it should take into consideration the different lengths of training required for various occupations and students' abilities and needs. Without these guidelines, employers run the risk of not being in compliance with the law.

Non-paid Work-Based Learning: A major concern is how to apply child labor laws and liability coverage to the various kinds of non-paid, work-based learning/community service activities. Questions that arise are: How are the various types of work-based learning activities defined? What types of insurance provides the best coverage for the specific kind of activity? Where does the responsibility for the activity reside and who should pay (schools, employers, parents)? The answers are not easily determined (refer to Attachments).

Definitions and National Technical Assistance Guide: There are many types of work-based/ community service learning activities for the multiple age groups STW affects. Some are non-paid and others are paid. These activities range from industry tours to actual registered apprenticeships. Work-based learning also includes teacher-employer internships and site visits for teachers and other school officials. A national taxonomy of work-based learning activities, with definitions, which lists risk factors and responsible entities is not available. The STW "Glossary of Terms" is a start but this needs to be expanded. Some states have established their own taxonomies and sets of definitions. Others have even had legislation enacted, or proposed, that helps clarify these issues. And more and more states are forming Risk Management Committees that address a wide range of issues. The workgroup believes that schools are the focal point for school-to-work, and because of this, a recommended protocol of behaviors, possible solutions and necessary steps should be provided through a national risk management technical

assistance guide. This would be structured to address each kind of work-based learning activity with a goal of reducing risk factors for schools as well as employers and students. **NOTE**: Since the publication of the national workgroup's paper, the National School-to-Work Office has published one guide on Employer Liability and is preparing a second guide on insurance and labor law issues.

Workers' Compensation and Paid Work-Based Learning: A few states have implemented or are in the process of implementing risk management strategies for expanding paid work-based learning opportunities. Some of these strategies include: (1) establishing a nonprofit corporation which would be the employer of record for STW students or naming schools as the employer of record; (2) purchasing a statewide health and accident insurance coverage for STW students (both basic and catastrophic); and (3) ensuring workers' compensation coverage for STW students involved in paid work-based learning activities. Little, if any, information is available about why states have chosen various strategies and little is known about their experiences to date. At this time, however, the national workgroup is aware of no evidence that suggests the presence of students in the workplace has any measurable negative impact on workers' compensation rates. This may or may not change when the school-to-work initiative goes full scale.

Student Health and Safety on the Job: Health and safety information and procedures for students in work-based learning are essential to preventing injuries and any subsequent law suits. The School-to-Work Opportunities Act requires per Section 601(4) "that students participating in STW programs shall be provided with adequate and safe equipment and safe and healthful workplaces in conformity with all health and safety requirements of federal, state, and local law." There needs to be a means for ensuring that state and local STW practitioners and employers are providing safe worksites for students and are not negligent in these areas. For example: Are states requiring various liability and accident insurance before off-siting students? Are "checklists" in place that teachers use in ascertaining potential risks? What kinds of supervision and/or monitoring are in place once a student is placed? What types of pre- and in-service training are provided educators on how to appropriately place students in STW activities?

Central Source for Information: During the workgroup's discussion there was a sharing of information on what some states are doing in the area of risk management and an identification of best practices states/locals are using to address risk management issues. For instance, some states engage many employers of all sizes despite the liability issues. Other states have developed technical assistance guides and professional development opportunities to protect against risk situations. This information is very useful, and a formal means for identifying and distributing this information to all STW stakeholders is essential. Without a system to share this information, states are left to struggle on their own with issues that are common to the school-to-work initiative nationwide.

Definitions of Insurance Coverage: There are types of insurance coverage currently available which will be useful to the school-to-work initiative. These include workers' compensation, general liability insurance, accident insurance, catastrophic insurance, transportation insurance and unemployment insurance. And although various states have addressed these issues, there is no national statement available about these types of coverage, their associated costs, exposures, and dimension of risk and how they may apply to school-to-work situations for employers, schools and students (see Attachments). Having a comprehensive knowledge base about insurance and other risk-related issues such as the Fair Labor Standards Act and Child Labor Laws is basic to successfully implementing school-to-work.

Insurance Product Review and Development: The goal of providing work-based learning opportunities for all students is a new and unique phenomenon for the United States. Note that the word all is underlined. Many of these off-site activities have occurred for years but for a relatively small number of students. Cooperative Education is one of these examples. STW, however, is for all students and that alone magnifies the need to address risk management issues. Through the increase in numbers, the exposure becomes greater. The workgroup has found that although student basic accident insurance exists and provides certain minimal coverage, it is often voluntary. This means that many students and parents who choose not to subscribe may not be adequately covered for personal injury or not covered at all. In addition, some student accident policies contain exclusions for certain activities and locations, and impose restrictions on times that coverage actually exists. In many situations, catastrophic accident insurance (similar to a major medical plan) exists only for individuals engaged in sports and not for the general school population. There is little, if any, information available about existing insurance coverage for protecting employers from damage students may do to product or employees at a worksite. Individual states have legislation and/or regulations that address school transportation issues but with the tremendous increase in off-campus placements for STW activities, schools, students and parents will incur an even greater exposure to transportation-related injuries.

At a minimum, existing school policies should be reviewed to find out what is and is not covered, and what are the time restrictions involved. Supervisory union/school district business managers play a key role in the review and policy purchase process. It may also be necessary to encourage the insurance industry to research the school-to-work initiative to see if any new types of insurance are necessary or more appropriate considering the large numbers of students participating and the variety of off-campus worksites.

Other Liability Issues: It is important to note that participants in work-based learning activities expose themselves to other types of risks other than being physically injured at the work site. Among these are the risks of sexual harassment of students, discrimination

and whistle blowing. Each of these areas needs to be addressed before work-based learning can be carried on with a minimum of uncertainty about consequences of potential events.

Unemployment Insurance. Are students in paid work-based learning situations covered by unemployment insurance? Historical precedent has addressed the college student's participating in a credit-bearing paid internship. But with so many secondary-aged students now participating in paid, credit-bearing work experiences, it is important to clarify the federal and states' laws regarding employers' UI exposure. There is evidence (legal and experiential) that suggests that any student (under 22) participating in a school-sponsored, credit-bearing, school-certified, paid, work-based learning situation may not be covered by UI and thus their host employer may not incur a UI liability. However, at this point, no official interpretation or guidelines have been issued from the US Department of Labor on how to apply this exemption to school-to-work activities. This will be researched and included in the national technical assistance guide that is being prepared.

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RISK MANAGEMENT INSURANCE OPTIONS

			SCHOOL		EMPLOYER	
CATEGORY	ACTIVITIES	Liability Ins.	Basic Acc. Ins.	Catastrophic Acc. Ins.	Liability Ins.	Workers' Compensation
Field Trips						
	Educational Visit/Tour	Verify	School Determined	School Determined	Verify	Not Appropriate
Non-Paid						
	Job Shadowing	Verify	Recommended	Recommened	Verify	Not Appropriate
	Mentoring	Verify	Recommended	Recommened	Verify	Not Appropriate
	Capstone Project	Verify	Recommended	Recommened	Verify	Not Appropriate
	Service Learning	Verify	Recommended	Recommened	Verify	Not Appropriate
	Unpaid Work-based Learning	Verify	Recommended	Recommened	Verify	Not Appropriate
	Student Entrepreneurship	Verify	Recommended	Recommened	Verify	Not Appropriate
	Cooperative Vocational Ed.	Verify	Recommended	Recommened	Verify	Not Appropriate
	Employer/Teacher Internship	Verify	NO	NO	Verify	Not Appropriate
Paid						
	Student Entrepreneurship	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Supported Employment	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Registered Apprenticeship	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Cooperative Vocational Ed.	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Other Pd Work-Based Learning	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Employer/Teacher Internship	Verify	Not Appropriate	Not Appropriate	Verify	Required
	Student Apprenticeship	Verify	Not Appropriate	Not Appropriate	Verify	Required

SCHOOL-TO-WORK RISK MATRIX

			RISK	
CATEGORY	ACTIVITIES	Student/Parent	School	Employer
Field Trips				
	Educational Visit/Tour	School Determined	School Determined	School Determined
Non-Paid				
	Job Shadowing	Medium-High	Medium-High	Medium-High
	Mentoring	Medium-High	Medium-High	Medium-High
	Capstone Project	Medium-High	Medium-High	Medium-High
	Service Learning	Medium-High	Medium-High	Medium-High
	Unpaid Work-based Learning	Medium-High	Medium-High	Medium-High
	Student Entrepreneurship	Medium-High	Medium-High	Medium-High
	Cooperative Vocational Education	Medium-High	Medium-High	Medium-High
	Emmployer/Teacher Internship	None	Medium-High	Medium-High
Paid				
	Student Entrepreneurship	Medium	High	High
	Supported Employment	Medium	High	High
	Registered Apprenticeship	Medium	High	High
	Cooperative Voc. Education	Medium	High	High
	Other Paid Work-Based Learning	Medium	High	High
	Employer/Teacher Internship	None	Medium	Medium
	Student Apprenticeship	Medium	High	High

Field Trips: School Determined based on # of trips and types of sites.
Risk higher than normal school time activities, other than sports, conducted away from school site.

Attachment B